IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 5459 of 2005

Between:

State Bank of India Rep. by its Assistant General Manager,
Zonal Office, Suryaraopet, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Government of India, Rep. by its Desk Officer,
Ministry of Labour, New Delhi.
2 The Central Government Industrial Tribunal- Cum-Labour Court Rep. by its Presiding Officer, M-2, Block, Manoranjan Complex, M.J. Road, Hyderabad.
3 T.Venkateswarlu S/o. and age not known,
Vijayawada, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus declaring the order No. L-12012/176/2003-IR(B-1) dt. 10-9-2003 and Order No. L-12012/176/2004-IR (B-1) dt. 21-2-2005 of the 1st Respondent referring the dispute of the third respondent for adjudication to the 2nd respondent as illegal and consequently to set aside the same and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.B.G.RAVINDER REDDY

Counsel for the Respondent Nos. 1 & 2.: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

Counsel for respondent No.3: Party-in-person.

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 5459 of 2005

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O R D E R:

This writ petition is filed seeking to declare the Order No.L-12012/176/2003-IR(B-1) dated 10.9.2003 and Order No.L-12012/176/2004-IR(B.1) dated 21.2.2005 of the 1st respondent as illegal and arbitrary.

The case of the petitioner is that the 3rd respondent who joined the Bank in 1965 as Clerk and later deputed to manage the affairs of Staff Cooperative Consumer Stores, Vijayawada, remained unauthorisedly absent from 29.10.1985 to 31.10.1986, 8.12.1986 to 13.12.1986 and 21.7.1987 to 31.7.1987. There were allegations of misappropriation of funds against the 3rd respondent and after an elaborate enquiry he was directed to pay an amount of Rs.1,02,160-90ps together with interest. Again he was unauthorisedly absent from duty from 1.1.1988 without any explanation and therefore he was treated as voluntarily vacated his service w.e.f. 9.5.1988 under Para XVI of the IV Bipartite Settlement dated 17.9.1984 and accordingly notice was served on him on 2.4.1988, which was received by the 3rd respondent on 9.4.1988. But, he did not report for duty nor give any explanation. Therefore, notice dated 12.5.1988 was given intimating

the 3rd respondent that his services were treated as voluntarily vacated and his name was removed from the muster rolls. Challenging the same, the 3rd respondent filed W.P.10425 of 1988 and the same was dismissed on 16.10.1989. Against that, he filed W.A. 1739 of 1989 which was also dismissed on 14.12.1989. Then he filed Review W.A.M.P. No.134 of 1990 and it was also dismissed and thus the above judgment has become final. However, the 3rd respondent had raised an Industrial Dispute after lapse of 13 years questioning the very same impugned order dated 12.5.1988 and despite the objections from the petitioner herein as to its maintainability, the 1st respondent referred the said I.D. to the 2nd respondent for adjudication. Hence the present writ petition.

The 3rd respondent filed counter affidavit stating, inter alia, that the I.D. referred by the 1st respondent was between himself and the Bank. The original schedule dated 10.9.2003 was later amplified in the corrigendum in view of the *res judicata* objection raised by the petitioner as a preliminary objection in which the Government has carefully formulated the points of dispute for adjudication. The action of respondent No.1 is after perusal of the report from the A.L.C. (C), Vijayawada which is an outcome of a tripartite meeting between himself, petitioner and the A.L.C. and that the action of the respondent No.1 is well justified. Having accepted the order issued by the respondent No.1 and accepted the designated C.G.I.T.-cum-Labour Court and took part in its proceedings, the petitioner has no right to argue and object that the order of respondent No.1 is illegal and unjustified. The other allegations made in the writ affidavit are denied.

Learned counsel for the petitioner raised three contentions in this writ petition. Firstly, that the 1st respondent passed the order of reference mechanically. Secondly, that the issue has been already become final in view of the orders passed by this Court in W.P. 10425 of 1988 dated 16.10.1989 and, thirdly, that the dispute is raised after lapse of 13 years. Therefore, he prays to quash the order of reference dated 10.9.2003 and 21.2.2005 in referring the dispute to the Labour Court.

On the other hand, respondent No.3 – party-in-person contended that the issue has not been determined by the competent authority because whether the Branch Manager who has issued the proceedings has got power to initiate disciplinary proceedings is not decided and hence there is no *res judicata* as such; that after considering the material placed before the appropriate Government an order of reference has been made and that he was making representations to the concerned authorities to consider his case but no action has been taken and therefore he filed an application to refer the dispute before the Labour Court and hence there are no laches on his part.

The proceedings dated 21.2.2005 issued by the 1st respondent reads as follows:

> "Whether the action of the Management of State Bank of India, Vijaywada in teminating Shri T.Venkateswarlu, Ex-clerk by treating him to have voluntarily vacated from Bank's services w.e.f. 9.5.1988 is justified?
>
> Whether Para XVI of the IV Bipartite Settlement under which the disputant

was terminated from service is applicable and whether the conditions stipulated therein were followed by the management?

Whether the Branch Manager, SBI, Vijayawada is competent and has jurisdiction to pass the orders to terminate the disputant without any enquiry while a chargesheet served by the Regional Manager and disciplinary authority was pending against him?

Whether Para 522 of the Shastri Award which was mentioned in the Memo dated 2.4.1988 was applicable in the instant case?

In the facts and circumstances of the dispute, what relief is the disputant concerned entitled to and what further directions are necessary?"

Earlier by orders dated 10.9.2003 a dispute has been referred by the Central Government to the Industrial Tribunal-cum-Labour Court, Hyderabad. The schedule in that reference is again modified by proceedings dated 21.2.2005. A copy of the earlier proceedings dated 10.9.2003 is not filed into the Court. One of the disputes that was referred to the Central Government is whether the Branch Manager is competent and has jurisdiction to pass the orders to terminate the employee without any enquiry. The respondent herein filed W.P. 10425 of 1988 challenging the action of the 1st respondent dated 12.5.1988 as illegal and to forbear the 2nd respondent from proceeding with the disciplinary action in pursuance of the charge sheet dated 1.5.1988. After considering the material, this court held that the action taken under para 16 of the bipartite settlement treating that the petitioner had voluntarily retired from the

bank's service does not warrant any interference under the discretionary jurisdiction of this Court under Article 226 of the Constitution of India. The said order has become final in view of the fact that the Division Bench of this Court in W.A. 1739 of 1989 has confirmed the same. Though a specific plea has been taken in the writ petition that the Branch Manager has no jurisdiction to issue an order of termination, but that issue has not been decided by this court in the writ petition or in the writ appeal. Therefore, the issue whether the Branch Manger who issued the termination orders to the 3rd respondent herein is competent to pass such orders and has jurisdiction to pass orders to terminate the employee is the matter required to be determined and decided by the competent Court. No doubt one of the issues has become final, but that does not mean that the issue in the Tribunal has already been decided by the competent Court. There are other issues such as whether the bipartite settlement is applicable and whether the Shastri Award which was mentioned in the Memo dated 2.4.1988 is applicable or not, which are not decided by this Court. Therefore, the question of *res judicata* may not apply to the present facts of the case. Even otherwise, that aspect of the case has to be determined and decided by the tribunal with reference to the pleadings between the parties, issues framed and the decision in the previous case. The rule of *res judicata* can be applied in subsequent proceedings only when the points raised in subsequent proceedings were raised in the prior proceedings and specifically decided. Hence the first contention of the learned counsel for the petitioner is untenable.

The next ground on which the learned counsel for the petitioner attacks the impugned proceedings is that the appropriate

Government has not applied its mind properly and it has been passed mechanically. An order of reference would be subjected to judicial review if it is shown that the Government has no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have been taken into consideration. Then only the power to interfere under Article 226 is available. As seen from the schedule, the issues in referring the dispute between the petitioner and the respondent No.3 have been clearly formulated. The manner in which the questions are formulated itself indicates that the appropriate Government had applied its mind. It is not the case of the petitioner that the appropriate Government has not applied its mind before passing the impugned reference.

Lastly it is contended that the dispute has been raised after lapse of 13 years, therefore, on the ground of delay and laches the impugned proceedings are liable to be set aside. It is the specific case of the respondent No.3 that he has been pursuing the matter with the appropriate Government and making several representations to the concerned authorities. As seen from the affidavit the petitioner raised objection before appropriate Government with regard to the maintainability of the said dispute. Whether there is delay or laches on the part of the respondent No.3 in approaching the Industrial Tribunal after lapse of 13 years is a question to be decided in the Industrial Tribunal itself basing on the evidence that may be adduced by the parties, in view of the fact that prima facie the respondent No.3 has shown that he was making representations to the concerned

authorities. Therefore the matter is required to be decided by the Tribunal.

Hence, there are absolutely no grounds to interfere with the impugned orders and accordingly the writ petition is dismissed. Consequently the interim stay granted earlier stands vacated. In the circumstances, no costs.

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K.C. Bhanu, J.

Date: --07—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Desk Officer, Government of India, Ministry of Labour, New Delhi.
2 The Presiding Officer, Central Government Industrial Tribunal- Cum-Labour Court, M-2 Block, Manoranjan Complex, M.J. Road, Hyderabad.
3 T.Venkateswarlu s/o Ramakotaiah, No.22, S.B.I. Colony No.1, Vijayawada-10.

4. 2 CD copies.